

Serial No. 09/762,396

ANDERLIK et al.

PF 0000049256

R E M A R K S

It is respectfully requested that the Examiner enter and consider the changes made in claims 1, 5 and 7 which are indicated in the Listing of Claims set forth in Appendix I attached to this paper.

Accordingly, applicants have revised the wording of Claim 1 to further emphasize that the swelling of the first polymer material with the odorant is achieved in accordance with applicants' invention without the aid of a swelling agent. The explanatory remarks which have been introduced into Claim 1 are correspondingly found on page 3, indicated lines 21 to 23, of the application. Claims 5 and 7 have been corrected to obviate the Examiner's reasons for rejecting those claims under 35 U.S.C. §112, ¶2. No new matter has been added.

Applicants could not have presented the changes which are effected in the claims earlier because the teaching of *Perman et al.* was introduced into the proceedings by the Examiner only in the final action. Also, the issues under Section 112, ¶2, were raised by the Examiner for the first time in the final action. Moreover, neither the revision of the wording of Claim 1 nor the correction of the errors in Claims 5 and 7 necessitates further search and/or examination on the part of the Examiner. As explained in the following, the Examiner's reasons for rejecting applicants' claims cannot be deemed to apply to the claims as herewith presented so that Claims 1 to 14 and 17 to 22 as set forth in Appendix I of this paper should place the application in condition for allowance. Entry and consideration of the following and the attached is therefore respectfully solicited.

On the one hand, the Examiner rejected Claims 5 and 7 under Section 112, ¶2, and applicants' corrections in those claims obviate the Examiner's respective reasons. Claims 1 to 14 and 17 to 22 as set forth in Appendix I are therefore no longer indefinite within the meaning of Section 112, ¶2.

On the other hand, the Examiner rejected Claims 1, 2, 4 to 14 and 17 to 22 under 35 U.S.C. §103(a) as being unpatentable in light of the teaching of *Pougalan et al.* (US 4,734,278) when taken in view of the disclosure of *Sand* (US 4,598,006) and of *Perman et al.* (US 5,340,614). The Examiner argued in this context that the subject matter of applicants' claims was obvious because the disclosure of *Perman et al.* conveys that cross-linked rubber-like polymers are swel-

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lable so long as they are impregnated with supercritical fluids<sup>1)</sup>. For the following reasons, the Examiner's position is not deemed to be well taken and the Examiner's arguments are not deemed to support a finding that applicants' invention is unpatentable within the meaning of Section 103(a).

The statement of *Perman et al.* that virtually any swellable polymeric material is usable in the impregnation process addressed by *Perman et al.*<sup>2)</sup> cannot reasonably be interpreted as a suggestion that any and all chemicals are capable of swelling each of the polymeric materials which are enumerated by *Perman et al.* Moreover, *Perman et al.* indicate that it is the supercritical fluid which acts to swell the polymer<sup>3)</sup> and that the supercritical fluid thereby creates conditions which allow that the solution of the impregnation agent in the carrier fluid diffuses into the polymer<sup>4)</sup>. The teaching of *Perman et al.* therefore clearly fails to suggest or imply that the enumerated polymeric materials are swollen by anything other than the supercritical fluid. As further emphasized by the revised wording of Claim 1 which is herewith presented, applicants' invention requires that the first polymer material is swollen with the odorant rather than with a supercritical fluid as employed by *Perman et al.*, or with a swelling agent as is employed in accordance with the disclosure of *Sand* under supercritical conditions<sup>5)</sup>.

Neither the disclosure of *Sand* nor the disclosure of *Perman et al.* can reasonably be taken to convey or imply that a polymeric material can be swollen by using an odorant instead of a supercritical fluid or swelling agent, and the Examiner's statement on page 3, lines 6 to 8, of the final action indicates that the Examiner arrived at the same conclusion. The disclosures of *Sand* and of *Perman et al.* can therefore not be deemed to suggest the requirement of applicants' invention that a non-macroporous, particulate, cross-linked polymer material which has rubber properties and has a glass transition temperature  $T_g$  of  $\leq -10^\circ\text{C}$  absorb the odorant into the polymer's network and thereby swell the respective polymer material with the odorant. As such, neither the disclosure of *Sand* nor the disclosure of *Perman*

1) Cf. page 3, lines 1 to 8, of the action dated January 10, 2005.

2) Cf. col. 9, indicated lines 31 to 49, of *US 5,340,614*.

3) Cf. col. 9, indicated lines 9 and 10, of *US 5,340,614*.

4) Cf. col. 9, indicated lines 61 to 64, of *US 5,340,614*.

5) Cf., for example, col. 2, indicated lines 22 to 32, and col. 3, indicated lines 18 to 23, of *US 4,598,006*.

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et al. close or even narrow the gap between applicants' invention and the teaching of *Pougalan et al.* according to which odorants are used to well polyether-ester-amide type polymers which are neither cross-linked nor do they exhibit a glass-transition temperature of equal to or less than  $-10^{\circ}\text{C}$ .

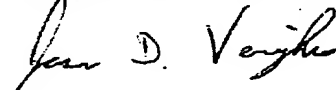
Applicants' invention as defined in Claims 1, 2, 4 to 14 and 17 to 22 is therefore deemed to be patentable under the provisions of Section 103(a) in light of the teaching of *Pougalan et al.* when taken in view of the disclosure of *Sand* and the disclosure of *Perman et al.*

The Examiner indicated that Claim 3 defines allowable subject matter. Accordingly and in light of the foregoing, all of the claims presented herewith should be allowable and the application should be in condition for allowance. Early action by the Examiner would be greatly appreciated by applicants.

Please charge any shortage in fees due in connection with the filing of this paper, including Extension of Time fees, to Deposit Account No. 14.1437. Please credit any excess fees to such deposit account.

Respectfully submitted,

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Encl.: THE LISTING OF CLAIMS (Appendix I)

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